IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ICONTROL NETWORKS, INC., Plaintiff, v. ZONOFF INC., Defendant.	Civil Action No. 15-CV-1109-GMS

ORDER

WHEREAS, on November 30, 2015, the plaintiff Icontrol Networks, Inc. ("Icontrol") filed this patent infringement action against the defendant Zonoff Inc. ("Zonoff") (D.I. 1);

WHEREAS, presently before the court is Zonoff's Motion to Dismiss and for a More Definite Statement (D.I. 8); Icontrol's Answering Brief in Opposition (D.I. 10); and Zonoff's Reply Brief (D.I. 12);

IT IS HEREBY ORDERED THAT:

Zonoff's Motion to Dismiss and for a More Definite Statement (D.I. 8) is DENIED.[1]

[1] Federal Rule of Civil Procedure 12(b)(6) provides for dismissal where the plaintiff "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss, the court "accept[s] all factual allegations as true, construe[s] the complaint in the light most favorable to the plaintiff, and determine[s] whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are inadequate to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

First, Zonoff contends that Icontrol's allegations fail to plausibly state a claim for willful infringement of U.S. Patent Nos. 7,633,385 ("the '385 patent"), 7,956,736 ("the '736 patent"), and 8,141,276 ("the '276 patent"). A plaintiff alleging a cause of action for willful infringement must "plead facts giving rise to at least a showing of objective recklessness of the infringement risk." *St. Clair Intellectual Prop. Consultants, Inc. v. Hewlett-Packard Co.*, 2012 WL 1134318, at *2–3 (D. Del. Mar. 28, 2012); *see also In re Seagate Technology LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007). Zonoff argues that Icontrol's allegations lack specific facts upon which Icontrol's belief of willful infringement is reasonably based. But Icontrol's reliance upon "information and belief" in its pleadings is not deficient

Dated: June 6, 2016

UNITED STATES DISTRICT JUDGE

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given the further information here demanded by Zonoff "lies uniquely within the control of the defendant." *See Simonian v. Blistex, Inc.*, No. 10-CV-01201, 2010 WL 4539450, at *3 (N.D. Ill. Nov. 3, 2010). The court finds that Icontrol's Complaint alleges facts supporting a plausible inference that Zonoff had knowledge of the patents-in-suit. (D.I. 1 at ¶¶ 14–23.) Therefore, Icontrol's Complaint goes beyond mere legal conclusions and makes sufficient factual allegations to state a claim.

Zonoff next argues that Icontrol's claim for pre-suit damages should be dismissed because the Complaint does not allege that Icontrol's products complied with the "marking" statute, 35 U.S.C. § 287. The court rejects Zonoff's position. Firstly, the notice requirements imposed by § 287 do not apply to all patented inventions. *See Crown Packaging Tech., Inc. v. Rexam Beverage Can Co.*, 559 F.3d 1308, 1316 (Fed. Cir. 2009) ("The law is clear that the notice provisions of § 287 do not apply where the patent is directed to a process or method."). As method patents, the '385 patent and the '736 patent are therefore exempt from the statute. Secondly, the court is unpersuaded by Zonoff's assertion that the requirements of § 287 are equivalent to the Federal Circuit's requirement of "a statement that the plaintiff has given the defendant notice" in an infringement complaint. *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007); (D.I. 1 at ¶ 20.). As addressed above, Icontrol's allegations of notice regarding the '276 patent satisfy the Federal Circuit's pleading standard. Accordingly, the court sees no reason to dismiss claims for pre-suit damages at this stage for any of the three patents listed.

Finally, Zonoff argues that to make a sufficiently definite complaint, Icontrol must enumerate the specific patent claims asserted in its allegations of indirect infringement. The court disagrees. Icontrol is not required at the pleadings stage to identify which claims it is asserting "as these details are determined through discovery." *Bear Creek Techs., Inc. v. Vonage Holdings Corporation, et al.*, Case No. 11-cv-723-GMS (D.I. 22) at *3 n.5 (D. Del. Sep. 27, 2012). Paragraph 4 of the court's Default Standard for Discovery contains a procedural mechanism for the identification of specific asserted claims, and the court sees no need to depart from that process here.